

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALI MIRREH DUALEH, et al.,

Defendants.

CASE NO. CR06-255JLR

ORDER

This matter comes before the court on motions for severance from Defendants Ali Mirrah Dualeh, Abdiselam Mohamed Gelle, Abdiweli Shanle Mahamed, and Ibrahim Shire Weyne (Dkt. ## 371, 381). For the reasons stated below, the court DENIES the motions.

Defendants move to sever the trial of co-defendant Ali M. Ismail for two reasons: (1) the government intends to introduce Rule 404(b) evidence against Mr. Ismail, and (2) Mr. Ismail is proceeding pro se, which Defendants contend will pose difficulties in conducting a joint trial, including the potential presentation of antagonistic defenses.

Rule 8(b) of the Federal Rules of Criminal Procedure permits the joinder of defendants where all are “alleged to have participated in the same act or transaction, or in the same series of acts or transactions constituting an offense or offenses.” Here, the government charges all Defendants, including Mr. Ismail, with conspiracy to distribute

1 and import cathinone. As such, Defendants do not challenge the propriety of joinder
2 under Rule 8(b).

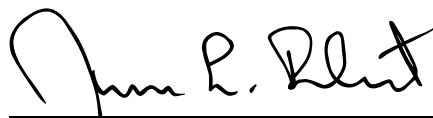
3 Rather, Defendants contend that Rule 14 of the Federal Rules of Criminal
4 Procedure mandates severance of Mr. Ismail's trial because the remaining Defendants
5 may be significantly prejudiced by a joint trial. Generally speaking, defendants jointly
6 charged are to be jointly tried. United States v. Gay, 567 F.2d 916, 919 (9th Cir. 1978).
7 A court may therefore grant a severance under Rule 14 only if there is a serious risk that a
8 joint trial would compromise a specific trial right of one of the co-defendants, or prevent
9 the jury from making a reliable judgment about guilt or innocence. Zafiro v. United
10 States, 506 U.S. 534, 539 (1993).

11 The present circumstances do not pose such serious risks. First, as to the potential
12 admission of Rule 404(b) evidence against Mr. Ismail, less drastic measures – particularly
13 the court's provision of a limiting instruction – will suffice to cure any risk of prejudice.
14 Second, Defendants' contentions concerning Mr. Ismail's behavior as a pro se litigant and
15 his possible presentation of an antagonistic defense, are speculative at best. Mr. Ismail
16 has assured the court that he will obey all applicable rules and procedures. Even
17 assuming that Mr. Ismail presents a conflicting defense, the presentation of mutually
18 antagonistic defenses in a joint trial are not prejudicial per se. Id. at 538. Here too, the
19 court's provision of jury instructions will dissipate any risk of prejudice. Notably, the
20 court intends to instruct the jury that it must give separate consideration to each
21 individual defendant and each separate charge against him.

22 Because Defendants fail to demonstrate a serious risk of prejudice, the court
23 DENIES their motions for severance (Dkt. ## 371, 381) .

24 Dated this 29th of May, 2007.

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JAMES L. ROBART
United States District Judge